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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,048	10/12/2000	Lavada Campbell Boggs	13934.1	6114
23556	7590	10/27/2003		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER WATKINS III, WILLIAM P	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 10/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,048

Applicant(s)

BOGGS ET AL.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 16-20 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 July 2003 has been entered.

2. The rejection over Varona in view of Boggs in the last office action is withdrawn in view of the arguments of applicant in the response filed 31 July 2003.

3. Newly submitted claims 21-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: this application contains claims directed to the following patentably distinct species of the claimed invention: (1) fibers with different elasticity in different segments, (2) fibers with different crimp in different segments, (3) fibers with different cross-sectional shape in

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different segments, (4) fibers with different cross-sectional configuration in different segments, (5) fibers with different hydrophobicity in different segments (6) fibers with different addition or level of internal treatments or additive in different segments, and (7) fibers with different tensile strength in different segments. Currently claims 18, 19 and 20 are generic to these species.

Since applicant has received an action on the merits for the originally presented species of the segments differing in elasticity, this species has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-26 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. The examiner notes that applicant is not entitled to a change in inventions examined in an RCE (see comparison chart in MPEP 706.07(h)).

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant

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must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse this constructive election on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-10, 16-20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varona (U.S. 5,679,042) in view of Morell et al. (U.S. 5,853,635).

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Varona teaches a web of continuous fibers where there are different transverse zones of different fiber composition in order to vary pore size to control liquid transport in sanitary articles (abstract, Figure 5, col. 6, lines 50-55). Morell et al. teach the desirability of using continuous fibers in two different segments where the fibers in the two segments are made of polymers, which may be inelastic such as polyethylene and elastic such as A-B block copolymers with elastomeric mid-blocks (col. 5, lines 5-25, col. 1, lines 20-35, col. 2, lines 20-25). The instant invention claims the use of continuous elastic fibers in a zone of a nonwoven web and different continuous fibers in another transverse zone of the web. It would have been obvious to one of ordinary skill in the art to have used the elastic fibers of Morell in one zone of the nonwoven web of Varona in order to secure the advantages taught by Morell for the use of different types of polymers in different segments or layers in sanitary articles because of the teachings of Morell. It further would have been obvious to use any other type of elastic fiber in the web of Varona in view of Morell, known to be used in nonwoven webs, such as olefin or styrene block copolymer elastomers, for the same purpose as that taught by Morell.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perkins teaches variation in hydrophobicity between layers (col. 10, lines 45-60), Marshall et al. teach transverse variation in absorbent fibers. Shida et al. give tensile strengths for different polymers (Table II).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



WW/ww

October 18, 2003

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**